IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5584 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE Y.B.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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N. K. OIL INDUSTRIES

Versus

GUJARAT ELECTRICITY BOARD

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Appearance:

MS SUDHA R GANGWAR for Petitioner

MR HS MUNSHAW for Respondents Nos. 1, 2

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CORAM : MR.JUSTICE Y.B.BHATT

Date of decision: 29/03/2001

ORAL JUDGEMENT

The petitioner herein is a consumer of the first respondent Gujarat Electricity Board, who has preferred this petition under Article 227 of the Constitution of India though styled as one under Article 226 of the Constitution read with Articles 14 and 16 of the Constitution.

2. Before proceeding further on the merits of the

matter, it is desirable to keep in mind the observations of the Supreme Court in the case of Mohmmad Yunus Vs. Mohammad Mustaqim (AIR 1984 SC 38) and Khali Ahmed Bashir Vs. Tufelhussein S. Sarangpurwala (AIR 1988 SC 184), on the question of the scope and ambit of the jurisdiction of this Court in the context of the powers which this Court may exercise under Article 227 of the Constitution. The Supreme Court has observed in the aforesaid two cases that the High Court, while examining a petition under Article 227 of the Constitution of India, cannot reappreciate the evidence and cannot disturb the findings of fact recorded by the courts below except where the same are perverse, and even errors of law cannot be corrected. Suffice it to say that this Court cannot enter into the quality of the decisions rendered; at best, it may only examine the decision making process adopted by the fora below.

3. The respondent challenges in the present petition the order passed by the Appellate Committee of the Gujarat Electricity Board, and the supplementary bill issued in consequence thereof.

4. The main contention raised by learned counsel for the petitioner is that the respondent Board itself had got the faulty meter checked with its own Gondal Laboratory, which found the meter not to be defective, and the respondent Board therefore got their meter retested by the Sabarmati Laboratory, which found that the meter had been tampered with in a manner which would permit the rotation disc of the meter to be stopped. In this context it was urged that the Board could not disown the report of its own testing laboratory namely the Gondal Laboratory.

5. The Appellate Committee in the impugned order has dealt with this aspect at considerable length.

5.1. The Appellate Committee has carefully perused both the laboratory reports namely the reports of Gondal Laboratory as also Sabarmati Laboratory, the statement of consumption of electrical energy month-wise and season-wise.

5.2. The laboratory report prepared by the Sabarmati Laboratory states that there was a filling by a metafil adhesive applied between the meter glass and meter body cover. This adhesive was applied in such a manner that gaps were created between the body of the meter and the glass, both on the left and right side of the glass, through which a plastic strip could be inserted and the

rotation disc of the meter could be stopped. More over, scratches were found on the dial frame near the denomination digits near 1000 and 10000. Scratches were also found on the digits of the counter drum of 1000 and 10000 denominations and also on the disc. The Appellate [Committee therefore observed that the findings of the Sabarmati Laboratory are diametrically opposed to the findings of the Gondal Laboratory. The Appellate Committee chose to rely upon the findings of the Sabarmati Laboratory because the Engineer, Mr. Dalsania who was in-charge of the Gondal Laboratory had acted in collusion not only with the present petitioner but also other consumers of the respondent Board, and had got into a habit of giving favourable opinions on meters of certain consumers for illegal consideration. It was for this reason that departmental proceedings were taken out against the said Mr. Dalsania, which proceedings were also made available to the Appellate Committee. The Appellate Committee went through the departmental proceedings and found that Mr. Dalsania was charged for misconduct, for preparing false laboratory inspection reports, with a view to shield consumers who have committed theft of energy. It is also apparent on the record that on the day when the meter was removed from the premises of the petitioner, other meters were similarly removed and replacements were fitted in respect of other consumers. All the said meters were handed over to the Senior Officer at Gondal with specific instructions that these meters should be tested at the Sabarmati Laboratory under the direct supervision of S.E. (Vigilance). Inspite of this clear instruction Mr. Dalsania got the meters of the petitioner and one Krishna Oil Mill inspected in the local laboratory at Gondal and prepared reports in favour of the consumers. Ultimately the finding recorded in the Departmental Inquiry is that the charges against Mr. Dalsania were proved, i.e., to say the meters were not tested in the Gondal Laboratory at all, and without testing the meters, false reports were prepared stating that the meters were in order. Ultimately after going through the appropriate procedure Mr. Dalsania was removed from service.

6. In the premises aforesaid it could not possibly be said that the respondent Board could not rely upon the report of the Sabarmati Laboratory, inasmuch as from the day on which the meter was removed from the premises of the petitioner, it had been the intention of the Board to have the meters tested at the Sabarmati Laboratory. The fact that they were inspected at the Gondal Laboratory was contrary to the specific instructions in this regard. The fact that a favourable report was obtained from the

Gondal Laboratory and the fact that the Senior Officer in-charge of the same was removed from service for misconduct adds to the justification for ignoring the report of the Gondal Laboratory.

7. Once this position is accepted the rest of the findings relied upon by the Appellate Committee are at least partially in favour of the petitioner. Many contentions on merits raised by the petitioner have been accepted by the Appellate Committee and consequently the original special bill issued to the petitioner in the sum of Rs. 19,13,558.93 ps. was scaled down (in the revised bill) to Rs. 5,29,392.38 ps.

8. In the premises aforesaid I see no justification in law or in fact for interfering with the impugned judgment and order in the present petition. This petition is therefore dismissed. Rule is discharged with no order as to costs. Ad-interim relief stands vacated.
rmr. ======